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RESEARCH ARTICLE

Legal Protection for People with Mental Illness as Victims and Perpetrators of Criminal Acts

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Abstract: This study aims to determine the synchronization of legal protection arrangements for people with mental illness (*ODGJ*) and its forms of legal protection in the structure of Indonesian laws and regulations. This study used normative juridical research methods. The approach used in this study is the Statute Approach and Analytical Approach with the specification of research inventory of laws and regulations, legal synchronization, and legal discovery in concrete. The result revealed that legal protection for people with mental illness (*ODGJ*) in some cases has not shown a level of synchronization. It is concerned in several legal provisions, namely Article 28G paragraph (2) and 28I of the 1945 Constitution, Article 86 of the Mental Health Law Number 18 of 2014, Article 453 of Law Number 17 of 2023, Article 9 of Law Number 39 of 1999, Article 333, 304, 491, 44 paragraph 2 of the Criminal Code, and Ministry of Health Regulations (*Permenkes*) Number 54 of 2017. According to these results, it can be concluded that the efforts to prevent and overcome shackling action for people with mental illness are through a promotive, preventive, curative, and rehabilitative approach to the community about individuals with mental illness (*ODGJ*). The construction of a mental hospital with a criminal room that can accommodate treatments for people with a mental health condition with criminal convictions or routine treatments of people with a mental health condition who are convicted in detention cells. There are clear juridical qualifications between crime and offense so as not to cause juridical problems in its implementation.

Keywords: Legal Protection; ODGJ, Perpetrators of Crimes

1. Introduction

The results of Basic Health Research (*Rikesdas*) data from the Ministry of Health in 2013 show that the average number of people with mental disorders/*ODGJ* with severe mental disorders in Indonesia include people with schizophrenia (hereinafter referred to as 1,17 per mil or around 400.000 people). This number has not been including sufferers of mild mental disorders, such as anxiety and depression, reaching 14 million people and those who are caught seeking treatment at health facilities (Yazfinedi, 2018). Based on these numbers, 14,3% of them or approximately 57.000 people have had or are currently shackled. The shackling rate in rural areas is 18,2%. This number is higher than that in urban areas, which is 10,7% (Ministry of Health of the Republic of Indonesia, 2016).

According to Laws (*UU*) Number 23 of 1966 concerning Mental Health, "patients with neglected mental disorders must receive care and treatment at the treatment or care places." The lack of public knowledge and understanding of psychiatric disorders, as well as the lack of accessible and affordable mental health services causes the rights of *ODMK* (People With Mental Problems) and *ODGJ* (People With Mental Disorders) to be socially neglected (M. Boland & Salami, 2021). Conflict within the family itself and the discrimination they experience when they are within the scope of their family can also trigger a person to



experience mental disorders. Law Number 3 of 1966 states that "Mental disorders are a form of behavioral deviation due to emotional distortion so that irregularities in behavior found are caused by a decrease in all mental functions, which include thinking processes, emotions, volition, and psychomotor behavior, including speech (Adityawarman, 2018).

Guaranteed protection for *ODGJ* in Law Number 18 of 2014 concerning Mental Health which contains only one criminal provision, namely Article 86, which states that "Anyone who intentionally engages in shackling, abandonment, violence and/or ordered person other for shackling, abandonment, and/or violence against *ODGJ* or other actions that violate the human rights of *ODGJ*, shall be subject to legal penalties as stipulated by the prevailing laws and regulations" (Kementerian Kesehatan, 2014).

Several other laws and regulations have been stipulated on Law Number 39 of 1999 concerning Human Rights, Law Number 6 of 2000 concerning Human Rights Courts, even the amendments to the 1945 Constitution. However, despite 72 Years of Indonesia's independence, the principle of humanity have not been fully upheld, and the act of humanizing humans has not truly been realized, as instances of neglect of people with mental disorders (*ODGJ*) still occur, even though Law Number 39 of 1999 concerning Human Rights exists (Kadir et al., 2021). Furthermore, the principles of the *Miranda* Rules, which have been accommodated into the Criminal Procedure Code (*KUHAP*), but in the legal enforcement process, there are still crucial aspects of the *Miranda* Rule and Human Rights that are consistently violated and/or overlooked by law enforcement authorities (Amalita et al., 2019).

The imposition of criminal sanctions on people with mental disorders in certain crimes is still being argued. In the process of sentencing perpetrators of criminal acts who experience mental disorders, judges that are guided by Article 44 paragraphs (1) and (2) of the Criminal Code discusses the elimination of criminal acts and the authority of judges to order perpetrators to be admitted to a mental hospital can be used appropriately, with the intention that perpetrators who experience mental disorders can obtain appropriate treatment before the law and obtain follow-up actions and can benefit the perpetrators and their families (Ismail, 2020). According to legal rules, the legal protection for perpetrators of criminal acts who experience mental disorders will be based on Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia which contains the right to recognition, guarantees, protection, and legal certainty that is fair and equal treatment before the law. Moreover, there is also Article 3 of the Law of the Republic of Indonesia Number 18 of 2014 concerning Mental Health which explains the objectives of Mental Health Efforts (Wickremsinhe, 2018).

The legal protection provided to people with mental disorders is still being pursued to the maximum even though it still experiences some shortcomings and obstacles (Salsa Bila & Sulistyanta, 2022). Several research results show that the judge has full authority to sentence offenders with mental disorders and the judge needs to involve the psychiatrists to manage the suspect with a mental disorder in their decision (Rizka et al., 2022). The results of other studies state that there is a tendency that judges not regard mental disorders as mitigating factors and do not include the elements of therapy in the verdict for people with mental disorders (Herdaetha, 2015). In contrast to the results of other studies, which state that the effects of impaired psychosocial functioning, which can protect against legally significant outcomes, are a special consideration in sentencing the accused (Buchanan et al., 2022).

The results of the study literature show that legal protection for victims of criminal acts by people with mental disorders (*ODGJ*) must obtain justice and fair treatment in the criminal justice system in Indonesia. The government and law enforcers must protect and legally recover victims of criminal acts. Crime in the justice system because the government is also responsible for the criminalization it formulates in criminal legislation (Anchori, 2020). In

contrast to this study, this study aims to review legal protection for people with mental illness as victims and perpetrators of criminal acts by using case studies.

2. Research Method and Materials

This research is normative legal research and empirical legal research (Sulaiman, 2018; Tanzeh, 2018). The approach is based on the primary legal material by examining theories, concepts, legal principles, laws and regulations and studying books and other documents related to this research. The method used in writing this normative juridical article is by using secondary data in the form of legislation related to mental health in terms of Health Law and Human Rights law (Irianto, 2017; Soekanto, 2007).

3. Results and Discussion

3.1. Case Study Of People With Mental Disorder (ODGJ) as Criminal Actors

3.1.1. Case 1 ODGJ as perpetrators of criminal acts

Person with mental disorders named AA (name pseudonym), place of birth in Boyolali in 1984, male gender, Indonesian nationality, residence of Ds. Karangasem RT. 028 RW. 008 Kec. Andon, Boyolali Regency, Religion of Islam, Entrepreneurial Work. On Sunday June 21, 2020 in a place that is still included in the Legal Area of the Boyolali District Court, he committed an act of physical violence in the household which resulted in the death of the victim, namely (the victim witness Suryanti who is the mother of the defendant).

From all of the above considerations, the defendant Arya bin Alatas in his position as a human being or legal subject in good health objectively has shown his skills and abilities regarding his rights and obligations where the defendant at the time of the incident despite having a history of effective bipolar disorder. The current episode is manic with psychotic features but the disease disorder is not permanent or continuous depending on mood so that the defendant in normal circumstances. The defendant can still distinguish which actions are good or bad. At trial, the defendant could communicate well, tell the events in normal chronological order, answer questions raised at trial, and consciously explain why he committed the act of persecuting his mother. Thus, as long as found conformity between the testimony of the witnesses, the defendant was a psychiatrist, and other means of evidence, he is considered capable of being held responsible. Therefore, based on the above facts and the expert's opinion, the assembly believes that he can be held responsible for his actions which have committed a crime. Then, no excuse can be applied to the defendant in this case, and during the trial, the defendant has also confirmed his identity as contained in the public prosecutor's indictment and has been supported by the testimony of witnesses at trial. As a result, the panel of judges opines that, in this case, there is no Error in Persona or a mistake in adjudicating the person. Subsequently, it will then be examined whether the defendant's actions fulfill all the elements of the crime on which he was charged so that the element of "whosoever/*barang siapa*" is considered fulfilled for the defendant.

Based on practice in trials related to Bipolar Disorder, this is not considered an excuse as stated in Article 44 of the Criminal Code so that a person with bipolar disorder can be sentenced to a criminal sentence, it cannot be used as a mitigating reason because the current episode of bipolar disorder is manic with psychotic features that are not permanent or continuous, but it just depends on the mood so that the defendant is still in normal circumstances and still be able to distinguish which actions are good or bad. In court, the defendant can communicate well and tell in a coherent chronological order the events normally, answer questions posed at trial, and in fully aware of being able to explain the reasons why the defendant committed the act of abusing his own mother so that a match was found between the testimony of the witness, the defendant, the expert (psychiatrist), and the evidence.

Thus, the judge sentenced the defendant AA to imprisonment for 2 (two) years with due observance of the rights to justice and legal protection in force.

From the judge's considerations above, it is clear that it must be seen in advance what phase is being lived by a person with a mental disorder. From this phase, whether someone with a mental disorder can control his behavior or not, and the phases in mental disorders are not permanent, meaning that people with mental disorders can happen again. This is important as a consideration for a court decision whether a person with mental disorders is given a prison sentence or given a 1 year hospitalization sentence in a mental hospital according to the contents of article 44 of the Criminal Code.

The purpose of imposing a prison sentence is not solely retaliation for his actions, but more of the goal to be achieved, namely to educate the accused who has realized his mistake so that he does not repeat the crime.

3.1.2. *Case 2 ODGJ as perpetrators of criminal acts*

The regulation Number 22/Pid.Sus/2020/PN Sgn decided on prison sentences in cases of crimes of domestic violence and PMB Decision Number 94-K/ PM.II -09/AD/V/2016 decided cases of maltreatment which resulted in mortality. In both court decisions, in their statement the psychiatrist stated that the defendant had indications of schizophrenia. Decision Number 22/Pid.Sus/2020/PN Sgn psychiatrist's statement in the psychiatric post mortem et repertum Number 001/IKF-ML/1/SK/II/2020 dated 08 January 2020 signed by dr. Wahyu Dwi Atmoko, Sp. F. which stated that the defendant had a remission phase of schizophrenia; and PMB Decision Number 94- K/PM.II-09/AD/V/2016 statement of the psychiatrist in the psychiatric post mortem et repertum Number 26/146/I/2016 dated 6 January 2016 signed by dr. Teddy Hidayat SpKj (K), stated that the defendant had chronic paranoid schizophrenia.

In his statement, the psychiatrist stated that the defendant had schizophrenic mental disorder with different types, namely chronic paranoid schizophrenia and schizophrenia in the remission phase. Article 44 of the Criminal Code as the basis for determining whether the *ODGJ* perpetrators have the ability to be responsible does not regulate rigidly, both regarding the type of mental disorders as specified in the Guidelines for Classification and Diagnosis of Mental Disorder (*PPDGJ*). In law enforcement practice, an assessment of whether there is capacity to be responsible is based on the judgment by the judge. Schizophrenia as a psychotic group mental disorder is commonly characterized by the inability to distinguish between fantasy and reality.

Not being convicted of *ODGJ* who committed a crime in the Criminal Code is categorized as a reason for abolishing a crime, namely the reason for forgiveness (*fait d'excuse*). In this case, only the perpetrator's guilt is eliminated, while the criminal act is seen as continuing, so that in his decision the judge declares the defendant acquitted of lawsuits (*ontslag van alle rechtsvervolging*). The reason for forgiveness is an excuse that negates the perpetrator's guilt, which also correlates with the elimination of criminal sanctions against the perpetrator. However, Article 44 of the Criminal Code determines that *ODGJ* perpetrators can be sanctioned by the act of being put in a mental hospital. During the trial phase, the judge requires a psychiatrist's testimony to prove and determine criminal responsibility. The position of expert testimony in criminal procedural law has the power of free evidence (*vrij bewijskracht*), and the assessment of a psychiatrist does not bind the judge. From the PMB Decision Number 94-K/PM.II-09/AD/V/2016 and Decision Number 22/Pid.Sus/2020/PN Sgn, which imposed prison sentences on schizophrenic defendants, even though they are mental experts in his testimony stated that the defendant was a schizophrenic.

The judge in his decision imposed a prison sentence of 8 (eight) months and 20 (twenty) days. Referring to the PMB Decision Number 94-K/PM.II-09/AD/V/2016 related to the normative descriptive system in examining criminal cases on ODGJ, although descriptively psychiatrists mention the presence of chronic paranoid schizophrenia mental disorder which causes the defendant to be unable distinguish between fantasy and reality and the defendant cannot be held accountable for his actions, but normatively, the judge assesses and determines that the defendant can be held accountable and is sentenced to imprisonment.

According to the Criminal Procedure Code, the normative descriptive system in examining ODGJ who commits a crime is in line with the negative evidence system of *wettelijke benijstheorie*. In this case, it is reflected in the PMB Decision Number 94-K/PM.II-09/AD/V/2016, where the judge set aside the testimony of a psychiatrist, thus deciding the defendant was guilty and capable of being held responsible. The prison sentence on the defendant in the PMB Decision Number 94-K/PM.II09/AD/V/2016 is a manifestation of the guilt and ability of the defendant to be responsible for the crime he committed. Psychiatric visum et repertum in PMB Decision Number 94-K/PM.II09/AD/V/2016 can be compared with psychiatric visum et repertum in Decision Number 22/ Pid.Sus /2020/PN Sgn which concludes that the examinee has mental disorder schizophrenia in remission phase (symptoms have been reduced by regular treatment), and there are no law violations committed related to the mental disorder being examined. Therefore, the judge decided that the defendant was sentenced to imprisonment for 7 (seven) years.

The existence of schizophrenic mental disorder in the PMB Decision Number 94-K/PM.II09/AD/V/2016 and Decision Number 22/Pid.Sus/2020/PN Sgn, does not make the defendant free from all lawsuits. The judge in deciding the case imposing prison sentences which can be studied from the perspective of sentencing purposes, as described in the next section; The ratio of *decidendi* of the judges in the PMB Decision Number 94-K/PM.II-09/AD/V/2016, among other considerations, weighs that the military prosecutor has submitted a criminal charge that mitigated the sentence on the defendant. The reason the military prosecutor reduced the criminal charge was because the defendant suffered from a severe mental illness of the chronic paranoid schizophrenia type as stated by a psychiatrist, and to recover from his condition, he had to carry out routine care and treatment. Schizophrenia is a complex mental disorder with symptoms of difficulty in thought processes, causing hallucinations, delusions, and thought disturbances. The disturbed mental condition of a schizophrenic is in line with the statement of a psychiatrist in the PMB Decision Number 94-K/PM.II-09/AD/V/2016.

In this case, it is more appropriate for the judge's case to impose sanctions on the act of being put in a mental hospital for 1 (one) year as formulated in Article 44 of the Criminal Code rather than imposing prison sentences. PMB Decision Number 94-K/PM.II-09/AD/V/2016 can be compared with Decision Number 22/Pid.Sus/2020/PN Sgn which imposes a prison sentence of 7 (seven) years in cases of domestic violence. The judge's decision in Number 22/Pid.Sus /2020/PN Sgn can be studied from teleological theory or objective theory (*utilitarian theory/ doeltheorieen*). According to objective theory, punishment is not a form of retaliation due to the mistake of the perpetrators but rather as a means of achieving the goal of protecting society in achieving prosperity. Classical utilitarianism was influenced by Jeremy Bentham (1748-1832) and John Stuart Mill (1806-1873). Criminal justification according to Bentham's view or the utilitarian view that criminal sanctions are goal-oriented, namely crime that must be prevented as early as possible (preventive), and aims to prevent other people from committing crimes (*deterrence*) and criminals should be repaired/developed (reform). The purpose of preventing criminal sanctions is to provide community protection by placing the perpetrators of criminal acts separately from society. The purpose of frightening or deterrence also aims to create fear of committing a crime.

Referring to Article 63 StGB, the placement in a mental hospital for ODGJ perpetrators of crime is primarily aimed at providing community protection in addition to providing treatment for perpetrators. StGB distinguishes the condition of ODGJ not being able to take absolute responsibility and being able to be partially responsible, which correlates with the types of sanction actions that can be decided by a judge, namely being put in a mental hospital which does not provide a time limit for placement in a mental hospital.

This is different from Article 44 of the Criminal Code which regulates placement in a mental hospital for a maximum of 1 (one) year for ODGJ. When referring to the purpose of sentencing, the imposition of imprisonment for a schizophrenia in the remission phase is oriented towards changing and influencing the behavior of the perpetrator so that he can become a good and useful member of society. Meanwhile, the imposition of sanctions for action is put in a mental hospital to receive treatment for a paranoid schizophrenic. Chronically can indirectly prevent inhumane treatment outside of the law, for example actions in shackling or beatings by members of the public because ODGJ have committed criminal acts or their actions have disturbed the community. Thus, the sanction for treatment in a psychiatric hospital for a chronic paranoid schizophrenic is a means of resolving conflicts arising from a criminal event; In addition, sanctions for compulsory treatment in a mental hospital can bring a sense of peace and restore balance in society from ODGJ disorders.

4. Conclusion

Arrangements for post-criminal state responsibility for people with mental illness (ODGJ) are not specifically stated in the Criminal Code, because the judge's decision practically is only limited to rulings that the ODGJ defendant is not sentenced to a crime because he cannot be held accountable for his actions and is free from all charges for forgiving reasons, including limited only to the Public Prosecutor demands. On the other hand, ODGJ requires post-criminal treatment actions which are accommodated by the state through norms so that they do not cause unrest and other crimes in the midst of society, but norms only recognize principal crimes and additional punishments for adult offenders with perfect reason and criminal acts for child offenders. Human rights for people with mental disorders (ODGJ) who commit criminal acts are similar as humans whose minds are perfect as citizens. They have rights, namely the right to be free from torture and degrading treatment, to be recognized personally before the law, to life physical and spiritual well-being, to a good and healthy environment, to receive treatment, as well as to special assistance at state expense.

References

- Adityawarman. (2018). Perlindungan Hukum Terhadap Orang Dengan Masalah Kejiwaan (ODMK) Dan Orang Dengan Gangguan Jiwa (ODGJ) Ditinjau Dari Kuhp Dan UU No.18 Tahun 2014 Tentang Kesehatan Jiwa. *Universitas Hasanuddin*, 18, 1–135.
- Amalita, A. R., Alawiya, N., & Utami, N. A. T. (2019). Perlindungan Hukum Terhadap Penderita Gangguan Jiwa Dalam Pelayanan Kesehatan Pada Struktur Peraturan Perundang-Undangan Indonesia. *ISSN 2502-3632 (Online) ISSN 2356-0304 (Paper) Jurnal Online Internasional & Nasional Vol. 7 No.1, Januari – Juni 2019 Universitas 17 Agustus 1945 Jakarta*, 53(9), 1689–1699.
- Anchori, Y. (2020). Legal Protection of Victims of Crimes Perpetrated by People With Mental Disorders (ODGJ) Linked to the Purpose of the State of Law in the Criminal System in Indonesia. *Jurnal Syntax Admiration*, 1(8).
- Buchanan, A., Moore, K. E., Pittman, B., & McKee, S. A. (2022). Psychosocial function, legal involvement and violence in mental disorder – CORRIGENDUM. *European Psychiatry*, 65(1). <https://doi.org/10.1192/j.eurpsy.2022.6>



- Herdaetha, A. (2015). Pertanggungjawaban Kriminal Orang Dengan Gangguan Jiwa. *Jurisprudence*, 5(1).
- Irianto, S. (2017). METODE PENELITIAN KUALITATIF DALAM METODOLOGI PENELITIAN ILMU HUKUM. *Jurnal Hukum & Pembangunan*, 32(2). <https://doi.org/10.21143/jhp.vol32.no2.1339>
- Ismail, M. W. (2020). PERLINDUNGAN HUKUM ORANG DENGAN GANGGUAN JIWA (ODGJ) DI RUMAH SAKIT KHUSUS JIWA. *Wal'afiat Hospital Journal*, 1(1). <https://doi.org/10.33096/whj.v1i1.22>
- Kadir, Y., Nurmalia, L. D., & Ismail, N. (2021). The Relevance of Legal Protection to Human Rights Related to Euthanasia Law in Indonesia. *Jambura Law Review*, 3(2). <https://doi.org/10.33756/jlr.v3i2.7111>
- Kementerian Kesehatan. (2014). Undang-Undang RI No.18 Tahun 2014 Tentang Kesehatan Jiwa. *Undang-Undang RI, No.18 Tahun 2014*, 1.
- Kementrian Kesehatan Republik Indonesia. (2016). Peran Keluarga Dukung Kesehatan Jiwa. *Kementrian Kesehatan RI*, 22–23.
- M. Boland, G., & Salami, T. (2021). The Mental Health and Service Use of Texas Law Enforcement Officers. *Journal of Police and Criminal Psychology*, 36(2). <https://doi.org/10.1007/s11896-020-09419-6>
- Rizka, R., Budiono, A., Prasetyo, Y., Praja, C. B. E., Khairunnisa, H. A., Khairunnisa, H. A., Iriani, D., & Hakim, H. A. (2022). Criminal Liability of People with Mental Disorders: Health Law Perspective. *Open Access Macedonian Journal of Medical Sciences*, 10(E). <https://doi.org/10.3889/oamjms.2022.8449>
- Salsa Bila, K., & Sulistyanta, ?. (2022). PERLINDUNGAN HUKUM ORANG DENGAN GANGGUAN JIWA (ODGJ) SEBAGAI KORBAN TINDAK PIDANA PENGANIAYAAN DALAM PERSPEKTIF VIKTIMOLOGI. *Recidive: Jurnal Hukum Pidana Dan Penanggulangan Kejahatan*, 11(1). <https://doi.org/10.20961/recidive.v11i1.67443>
- Soekanto, S. (2007). *Pengantar Penelitian Hukum*.
- Sulaiman, S. (2018). Paradigma dalam Penelitian Hukum. *Kanun Jurnal Ilmu Hukum*, 20(2). <https://doi.org/10.24815/kanun.v20i2.10076>
- Tanzeh, A. (2018). Metode Penelitian Kualitatif: Konsep, Prinsip, dan Operasionalnya. In *Akademia Pustaka*.
- Wickremsinhe, M. N. (2018). Emergency involuntary treatment law for people with mental disorders: A comparative analysis of legislation in LMICs. *International Journal of Law and Psychiatry*, 56. <https://doi.org/10.1016/j.ijlp.2017.09.003>
- Yazfinedi. (2018). Konsep, Permasalahan, Dan Solusi Penyandang Disabilitas Mental Di Indonesia. *Quantum: Jurnal Ilmiah Kesejahteraan Sosial*, 14(2).